Before the
Federal Communications Commission
Washington, D.C. 20554

In re Applications of	)	
	)	
TRINITY BROADCASTING OF FLORIDA, INC.	)	MM Docket No. 93-75
	)	File No. BRCT-911001LY
For Renewal of License of Television Station WHFT(TV) Miami, Florida	)	
	)	
GLENDALE BROADCASTING COMPANY	)	File No. BPCT-911227KE
	)	
For Construction Permit for New Television Station in Miami, Florida	)	
	)	
and	)	
	)	
TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.	)	MM Docket No. 93-156
	)	File No. BRCT-911129KR
For Renewal of License of Television Station WHSG(TV) Monroe, Georgia	)	
	)	
GLENDALE BROADCASTING COMPANY	)	File No. BPCT-920228KE
	)	
For Construction Permit for New Television Station in Monroe, Georgia	)	
	)	
and	)	
	)	
TRINITY BROADCASTING OF NEW YORK, INC.	)	File No. BRCT-940202KE
	)	
For Renewal of License of Television Station WTBY(TV) Poughkeepsie, New York	)	
	)	
MARAVILLAS BROADCASTING COMPANY	)	File No. BPCT-940426KG
	)	
For Construction Permit for	)	

New Television Station in Poughkeepsie, New York	)	
and	)	
NATIONAL MINORITY T.V., INC.	)	File No. BRCT-931004KI
For Renewal of License of Television Station KNMT(TV) Portland, Oregon	)	
MARAVILLAS BROADCASTING COMPANY	)	File No. BPCT-931230KF
For Construction Permit for New Television Station in Portland, Oregon	)	
and	)	
TRINITY CHRISTIAN CENTER OF SANTA ANA, INC.	)	File No. BRCT-930730KF
For Renewal of License of Television Station KTBN-TV Santa Ana, California	)	
MARAVILLAS BROADCASTING COMPANY	)	File No. BPCT-931028KS
For Construction Permit for New Television Station in Santa Ana, California	)	
SIMON T	)	File No. BPCT-931101LF
For Construction Permit for New Television Station in Santa Ana, California	)	

MEMORANDUM OPINION AND ORDER

Adopted: October 22, 1999 **Released:** November 4, 1999

By the Commission: Commissioner Ness abstaining from voting; Commissioner Furchtgott-Roth dissenting and issuing a statement.

1. By this memorandum opinion and order we approve four settlement agreements involving the above-captioned stations licensed to various entities affiliated with the Trinity Broadcasting Network (TBN).[1] The Joint Request for Approval of Amended and Superceding Settlement Agreement, filed May 17, 1999, presents a settlement between Trinity and Glendale Broadcasting Company (Glendale) and Maravillas Broadcasting Company (Maravillas). Three pleadings, filed May 14, 1999 and entitled Amended Joint Request for Approval of Settlement Agreement and Request for Expedited Treatment, present settlements between Trinity and (1) The League of United Latin American Citizens (LULAC), (2) The Spanish American League Against Discrimination (SALAD), and (3) The California State Branches of the NAACP and the Alaska/Oregon/Washington State Conference of Branches of the NAACP (NAACP). We find that approval of the settlements would serve the public interest and comply with Commission precedent.

I. BACKGROUND

2. In four comparative renewal proceedings, Glendale and Maravillas seek the facilities of stations WHFT(TV), Miami, Florida, WHSG(TV), Monroe, Georgia, WTBY(TV), Poughkeepsie, New York, KNMT(TV), Portland, Oregon, and KTBN-TV, Santa Ana, California. Simon T, an individual, also seeks the Santa Ana station.[2] Additionally, LULAC and the NAACP filed petitions to deny against the Santa Ana facility, the NAACP filed a petition to deny against the Portland facility, and SALAD filed a petition to deny against the Miami facility.

3. Proceedings involving the Miami, Florida station resulted in a Commission decision concluding that Trinity Broadcasting of Florida, Inc. (TBF) was unqualified to remain a licensee and that Glendale was likewise unqualified to become a licensee. Trinity Broadcasting of Florida, Inc., FCC 98-313 (Apr. 15, 1999), appeal pending, Case No. 99-1183 (D.C. Cir. May 17, 1999).[3] The Commission held that the common principals of TBF and other TBN-affiliated entities had abused the Commission's processes by representing that National Minority T.V., Inc. (NMTV) was a minority-controlled entity to take advantage of an exception to the restrictions of the multiple ownership rules. The Commission found that NMTV was in fact controlled by TBN and its President, Paul Crouch. Additionally, the Commission found that George Gardner, a principal of Glendale (and Maravillas), lacked candor in requesting extensions of time

[1] For convenience, these entities will be referred to as "Trinity." A detailed listing of the parties to each settlement is found at paragraph 18, infra.

[2] A proposed settlement agreement between Simon T and Trinity is now pending before the Mass Media Bureau.

[3] Glendale and Maravillas intervened in the judicial appeal of the Commission's decision. They indicate, however, that they "will cease being interested parties" upon approval of the settlement. Notice of Intention, and Motion for Leave to Intervene, No. 99-1183 (D.C. Cir. filed June 8, 1999) at 2. The petitioners to deny did not intervene and will not participate in the appeal.

to construct several low power television stations. The Commission therefore denied TBF's application for renewal of the Miami station and also denied Glendale's competing application for a construction permit.[4]

4. Additionally, the Commission rejected settlement agreements submitted by Trinity, Glendale, Maravillas, LULAC, SALAD, and the NAACP. The Commission held that because these agreements were contingent on the renewal of the Miami station's license they could not be granted. FCC 98-313 at ¶¶ 13, 128. However, the Commission further held that, because the loss of the Miami station would be sufficient to deter future misconduct by Trinity's principals, there would be no bar to an amended settlement, otherwise in accordance with the Commission's rules, that did not contemplate renewal of the Miami station.

5. The parties have now filed amended settlement agreements that do not call for the grant of the Miami station's renewal application.

II. SETTLEMENT AGREEMENTS

6. Glendale/Maravillas Settlement. Under this proposed settlement, Trinity would purchase all of the stock and equity in Glendale/ Maravillas for $28 million. NMTV would contribute $4 million of this amount. The Glendale and Maravillas applications would be dismissed. The parties assert that the settlement of this case would serve the public interest in efficiently resolving licensing proceedings and conserving administrative resources. They have submitted sworn declarations indicating that none of the applications were filed for the purpose of reaching or carrying out a settlement agreement and that no payments have been made or promised outside of the agreement.

7. LULAC, SALAD, and NAACP Settlements. Pursuant to these settlements, LULAC, SALAD, and the NAACP would dismiss their petitions to deny against Trinity. Trinity would, in turn, pay $57,000 to LULAC, $143,500 to SALAD, and $11,500 to the NAACP as partial reimbursement of their respective legitimate and prudent legal expenses. Moreover, each of the settlements provides for Trinity to donate money for charitable purposes.

8. Specifically, the LULAC settlement calls for Trinity to donate $1.8 million to endow a series of grants to nonprofit organizations "to promote the increased participation of people of color in the attainment of the American dream" through the mass media, other businesses, and education. The agreement provides that the grants would be made by a committee of senior members of LULAC's board of directors and that LULAC and its principals could not be grantees.

9. The SALAD agreement provides that Trinity will donate $200,000 to endow two scholarships. The Antonio Maceo Scholarship Fund would award merit-based scholarships to students at Miami-Dade Community College or other Florida institutions of higher education for the study of broadcasting and mass communications. The Jorge Mas Canosa Bilingual Education Fund would award need-based scholarships for study at Miami-Dade Community College or other Florida institutions of higher education providing bilingual education for immigrant students seeking to become American citizens. The endowments would be managed by trustees independent of SALAD and SALAD's principals could not

[4] Glendale filed a Contingent Petition for Reconsideration of the Commission's decision, which will be dismissed as moot in light of the rulings herein.

be recipients of the scholarships.

10. The NAACP agreement similarly provides for Trinity to donate $50,000 for the establishment of a scholarship endowment. The W.E.B. DuBois Scholarship Fund would award merit-based scholarships to residents of Oregon and California enrolled in an Oregon or California institution of higher education studying mass communications or planning a career in broadcasting or mass communications. As in the case of the SALAD agreement, the fund would be managed by trustees independent of the NAACP and the NAACP's principals could not be recipients of the scholarships.

11. The parties have submitted sworn declarations that compensation under the agreements is limited to the reimbursement of legitimate and prudent legal fees and expenses. The Mass Media Bureau supports approval of the settlement agreements. As set forth in the following discussion, we agree with the Bureau's analysis.

III. DISCUSSION

12. We agree with the parties that approval of the settlement agreements would serve the public interest by avoiding burdensome litigation and uncertainty as to the status of the stations involved. Additionally, the endowments that would be established pursuant to the LULAC, SALAD, and NAACP agreements would also benefit the public. Although the settlements raise certain issues regarding compliance with the Commission's rules and policies, we resolve these issues favorably to the parties.

13 . Glendale/Maravillas Settlement. Under 47 C.F.R. § 73.3523(c), a competing applicant in a comparative renewal proceeding may receive reimbursement for withdrawing its application only after issuance of an initial decision and then may only receive an amount less than or equal to its legitimate and prudent expenses. The Glendale/Maravillas Settlement does not conform to this provision because (1) with the exception of the Miami proceeding, no initial decisions have issued in the pertinent proceedings, and (2) the reimbursement stipulated exceeds Glendale/Maravilla's legitimate and prudent expenses.

14. In this case, however, we believe that waiver of the rule is appropriate. The Commission has concluded that the unnecessary prolongation of comparative renewal proceedings does not serve the public interest in an environment in which the legal standards applicable to comparative renewal proceedings are uncertain. See Implementation of Section 309(j) of the Communications Act, 13 FCC Rcd 15920, 16004-06 ¶¶ 209-14 (1998). In this regard, as a result of recent court cases, comparative renewal proceedings must be decided on an ad hoc basis. Id. As an additional matter, the record provides no indication that the applications here represent the type of abusive applications that the rule is intended to discourage. Glendale and Maravillas filed their applications subject to the limitations of 47 C.F.R. § 73.3523. As they indicate in their sworn declarations, they had no expectation of receiving the type of reimbursement prohibited by the rule. Moreover, Glendale and Maravillas have prosecuted their applications diligently for several years and in the case of the Miami proceeding, Glendale prosecuted its application through a final Commission decision. We therefore have no basis to believe that Glendale or Maravillas filed its applications for an improper purpose. Additionally, the Commission has held that enforcement of the rule in pending cases is not necessary to discourage the filing of abusive applications in the future, since Section 309(k) of the Communications Act prospectively bars the filing of applications mutually exclusive with renewal applications. See EZ Communications, Inc., 12 FCC Rcd 3307, 337-08 ¶¶ 2-3 (1997). This factor provides an additional reason to waive the limitations of 47 C.F.R. § 73.3523, and we do so here.

applicant, the filers will withdraw their petitions. Even if the money is not being paid directly to the filers, the payment of money to third parties designated by the filers is equally problematic in terms of procedural abuse. As a general matter, the fact of third party payment does not remedy the impropriety of prohibited exchanges. For instance, if a government official does not personally receive money in return for voting a particular way, but agrees that the money be paid to somebody else, that is bribery nonetheless. *See* 18 USC section 201(b) (b). So long as the *quid* of withdrawal is given for the *quo* of payment, it does not matter, in so far as the prevention of procedural abuse is concerned, who the payment goes to. A corrupt exchange -- the payment of cash to induce the withdrawal of a petition to deny -- has occurred. And in both cases, the initial filing is motivated by the prospect of cash payments, whether to the filer personally or an entity picked by the filer. Thus, I would attribute to the filers themselves the payment of funds to parties expressly designated by the filers as recipients.

Even if one does not accept the argument that designation of third party payees by the filers is tantamount to receipt of the funds by the filers, the creation of the endowments picked by the petitioners is quite clearly "other consideration" for the withdrawal of the petitions to deny. Under the regulation, consideration is defined as

> financial concessions, including but not limited to the transfer of assets or the provision of tangible pecuniary benefit, *as well as non-financial concessions that confer any type of benefit on the recipient.*

73.3588(c)(4) (emphasis added). Thus, consideration does not require economic benefit; peace of mind, personal satisfaction, or any other kind of advantage not previously enjoyed is sufficient.

Trinity clearly has made a "financial concession" to petitioners: they have agreed to give away money. This is something that Trinity had no preexisting obligation to do. The petitioners, in turn, have received "any type of benefit." Even though the money will not flow directly to petitioners, they have personally received consideration under the agreement in at least two ways.

First, petitioners have been given the power to tell Trinity to whom they must transfer the funds in question. This is something that petitioners had no preexisting right to do. If someone comes along and tells me that I can decide how to give away $1 million, that person has conferred an advantage on me -- the power of allocating those funds -- that I did not previously enjoy. The ability to allocate the funds may not, in the view of some, be as good as receiving the money personally, but that ability is itself a real benefit. And if the giving away of that other person's money gives me personal satisfaction or happiness or a feeling of well-being, that counts as consideration too.

Second, and perhaps more importantly, petitioners are clearly benefitted by the settlement agreement in that their public policy goals have been advanced by the creation of the endowments. The very raison d'etre of petitioners' organizations is to promote certain social and political ideas and causes. And every time one of these ideas or causes is advanced -- by, for instance, a donation to a fund that they support and in which they believe -- petitioners and

presumably their membersip are benefitted by that advancement.

Of course, petitioners must perceive some value to them in the right of designation and in the creation of the scholarship funds in question, or they would never have agreed to the settlement. Thus, when the Order states that "[b]y specifying the recipients of the grants, the parties eliminated the possibility that the grants could be awarded in a manner that benefits" them, *supra* at para. 15, it gets things exactly backwards. By designating the recipients of the grants (which the ability to do itself benefitted petitioners) the petitioners were able to ensure that the money would go to a cause that advanced their policy goals and thus inured to the benefit of the petitioning organizations.

In sum, I think it obvious--and thus a violation of our regulation--that petitioners are getting value out of this deal. For these reasons, and contrary to the conclusion of the item, there is in my view no compliance with section 73.3588.

I am also troubled by the conclusion in this item that "the endowments that would be established pursuant to the LULAC, SALAD, and NAACP agreements would . . . benefit the public." *Supra* at para. 12. This Commission should not be in the business of evaluating the merits or demerits of private charitable or political organizations and encouraging the flow of money to some groups over others. Suppose for a moment that the shoe were on the other foot: what if a settlement agreement directed payments to a group that espoused a political, legal or social philosophy inconsistent with that of the Commission's? Would we deny that settlement on the ground that the causes being funded did *not* serve the public? Either way, these are *wholly* inappropriate determinations for the Commission to be making. We are supposed to be implementing and enforcing federal communications law, not directing payments to favored organizations, however laudable, in exchange for the withdrawal of official papers in licensing proceedings.

Settlement with Competing Applicants: Glendale/Maravillas

Section 73.3535(c) of our regulations, which addresses the dismissal of applications in renewal proceedings, provides that competing applicants who with to withdraw their application can do so only after the initial decision *and* must certify "that neither the applicant nor its principals has received or will receive any money or other consideration in excess of the legitimate and prudent expenses of the applicant in exchange for" such withdrawal. 47 C.F.R. section 73.3535(c).

Here, competing applicants are being paid $28 million -- a number far in excess of the parties' costs. Nor was an initial decision ever rendered. With no possibility that the rule could be satisfied, the Commission instead waives the rule for "good cause." As the D.C. Circuit has explained, however,

> a waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest. The agency must explain why

> deviation better serves the public interest and articulate the nature of the special circumstances to prevent discriminatory application and to put future parties on notice as to its operation.

Northeast Cellular Telephone Company, 897 F.2d 1164, 1166 (D.C. Cir. 1990)(citing *Industrial Broadcasting Co. v. FCC*, 437 F.2d 680 (D.C. Cir. 1970) (requiring showing of special circumstances other than those considered in general rulemaking)).

There is articulated no "good cause" for waiver here that would not exist in virtually any case in which a competing applicant wanted to withdraw an application from a comparative hearing proceeding. If, as the Commission states, the limitation on payments to settling parties no longer serves any deterrent purpose, *supra* at para. 14, then the rule itself is useless in all applications and should simply be repealed. But it does not mean that there is something about the facts of this particular case that warrant a waiver.

And while it may be true that settlements should be encouraged because they decrease uncertainty and litigation, *id.* at para. 12, that is an argument for relaxing or eliminating the rule constraining settlements. In fact, it was an argument that was rejected in the course of the rulemaking that resulted in the instant regulations. *See* 4 FCC Rcd at para. 14. It is not, in any event, a case-specific consideration. Similarly, the fact that settlements in comparative license renewal proceedings in general are to be encouraged, *supra* at para. 14, goes to the need for the rule itself, not the justifiability of a waiver on the facts of this case.

Finally, the Commission says that it has no reason to believe that these competing applicants filed their documents with any improper intent. *Id.* at para. 14. But the fact that there is no specific evidence of intent to abuse Commission processes is likewise a general point that it not tied to anything about this particular case. This rule, adopted as a "safeguard[]" against procedural abuses, 5 FCC Rcd. at para. 1, is not premised on actual evidence of bad intent. (Of course, if the rule were anything but prophylactic, it would simply be redundant of the rules that prohibit actual abuse of the Commission's processes.) Rather, the rules establishes a limit on settlement payments in order to decrease the likelihood of such filings. If the rule can be waived anytime a party certifies that it had no bad intent, then the rule would achieve none of its preventative purpose.

This state of affairs is very much like that in *Northeast Cellular Telephone Company*, 897 F.2d 1166. There, the Court of Appeals vacated the Commission's waiver of the rule requiring a licensee to establish its financial qualification. The licensee did not meet the standard set forth in the rule for such qualification, but the Commission waived the rule on the ground that it knew from experience with the party that it was financially capable of operating the proposed systems. *Id.* at 1166. Because there was "no speculation" as to the party's financial qualifications, enforcement of the rule would not serve its intended purpose. *Id.*

The Court rejected this reasoning, holding that "[i]t does not articulate any standard by which we can determine the policy underlying its waiver. . . . The record reveals nothing unique

about [the licensee's] situation." Here, as explained above, the Commission has not pointed to anything about this specific case that warrants departure from the general rule. It simply reasons, in essential part, that it has no reason to believe these applicants acted in bad faith; but this is no more of a waiver standard than the Commission's belief that the party in *Northeast Cellular* could pay.

* * *

In sum, I believe that the settlement in this case raises a most unseemly appearance of payoffs to favored political or charitable organizations -- precisely the kind of situation that the relevant rules were intended to prevent. The reasoning of the Commission in approving the settlement as in conformity with our rule strains credulity: when a petitioner in opposition can require the transfer of cash payments to an entity hand-picked by the filer, that is just as much an abuse of the filing process as a transfer of cash to the filer itself, and the withdrawing party is clearly receiving a benefit under the agreement. Nor do I believe that the reasons given for the waiver of the rule governing competing applicants pass muster under the relevant judicial precedents. Accordingly, I respectfully dissent.